

## MINUTES HEARING OFFICER MAY 15, 2018

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

### **STUDY SESSION 4:30 PM**

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Principal Planner  
Lee Jimenez, Senior Planner  
Sydney Bethel, Planning Technician

There were 9 interested citizens present at the study session.

- Staff and Hearing Officer discussed overview of scheduled cases.

### **REGULAR SESSION 5:00 PM**

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Principal Planner  
Lee Jimenez, Senior Planner  
Sydney Bethel, Planning Technician

There were 17 interested citizens present at the regular session.

Meeting convened at 5:00 PM and was called to order by Ms. MacDonald. She stated that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) calendar days, by May 29, 2018 at 3:00 PM, to the Community Development Department.

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The following was noted:

- **Agenda Item No. 1**

**April 3, 2018 Hearing Officer Minutes**

Steve Abrahamson, Principal Planner, stated that the May 1st, 2018 Hearing Officer Minutes had been reviewed and were approved.

- **Agenda Item No. 2**

Request approval to abate public nuisance items at the **STORM PROPERTY (CE180025)** located at 1105 West Elna Rae Street. The applicant is the City of Tempe.

Code Compliance Officer Andres Reyes, noted that this property was in violation from 180 days (January 2018) previous of this date. He noted that the compliance from April 3<sup>rd</sup> was due today. He stated that he had met with the owner two weeks prior, and found two (2) dead trees. He is still awaiting pictures of removal from owner.

Darrel Steele, property owner, stated that his grandmother had previously owned this property; she passed away on March 21<sup>st</sup>, 2018. Darrel stated that he did not receive the death certificate until a week prior to the meeting. In addition to this, Darrel stated that the house belonged to the bank, not himself.

Ms. MacDonald proceeds to explain the abatement procedure, and also noted that if completed in two weeks, the abatement will disappear.

Steele responded, "will the abatement lien go against the water bill? Because the water bill is in my name, not the house."

**Point of Clarification: lien is placed on property, not utilities**

Steve Abrahamson stated, "You have until the 29<sup>th</sup> of May to appeal with the city of Tempe Community Development Department."

**Decision:**

Ms. MacDonald approved the abatement request for the STORM PROPERTY (CE180025) located at 1105 West Elna Rae Street.

- **Agenda Item No. 3**

Request a Use Permit to allow massage therapy services for AZ MASSAGE & BODYWORK located at 209 East Baseline Road, Suite No. E102. The applicant is Pilma Miller. (PL180102)

Sydney Bethel, Planning Technician, gave the following overview of the case:

- The location of this project is office #6 of suite E 102 in the Mill Town Center located at 209 East Baseline Road within the PCC-1, Planned Commercial Center Neighborhood District.
- The hours of operation would be daily, by appointment only, from 8am to 7pm.
- The applicant is a licensed massage therapist, and only employee of the establishment.

- Services include a wide range of massage techniques.
- Massage Day Spa, located in the same suite, has been in operation since 2006 with similar criteria needed for a use permit, and have no issues to this date.
- no public input has been received by staff.

Ms. Pilma Miller was present to represent this case. She acknowledged the staff summary report and her understanding of the assigned conditions of approval.

Ms. MacDonald then asked the public to speak about this case, to which no one did.

Ms. MacDonald noted that this request meets the Zoning and Development Code Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic; the amount of vehicular and pedestrian traffic generated by the proposed use is consistent with similar retail uses permitted in this zoning district.*
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;*
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;*
4. *Compatibility with existing surrounding structures and uses;*
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.*

**Decision:**

Ms. MacDonald approved the Use Permit for (PL180102) to allow massage therapy services for AZ Massage and Bodywork located at 209 East Baseline Road.

• **Agenda Item No. 4**

Request for a Use Permit to allow a second story addition to a single-family residential home for the ARMSTRONG RESIDENCE located at 4709 South Taylor Drive. The applicant is Scott Armstrong. (PL180112).

Sydney Bethel, Planning Technician, gave the following overview of the case:

- This property is located in lot 255 of the Sand East 3 Division, South of East Fremont Drive and east of South McClintock Drive of the R1-6 Single Family Residential Home District.
- The applicant is proposing a second story addition to the single-story house.
- The addition will be attached, with internal access from the laundry room.
- The addition will be 1282 sq. ft. with 2 bedrooms, 1 bathroom, and one great room.
- The intent is for the applicant's father to reside with them.
  - **Point of Clarification: must a be a separate dwelling if there is to be cooking facilities installed.**
- Three additional houses within the area have had second story additions.

**Ms. MacDonald requested a condition of approval so that the east windows of the 2<sup>nd</sup> story addition must have opaque windows.**

Amanda Armstrong and Scott Armstrong, property owners, are present and agree with the terms and conditions of approval as well the proposed condition by Planning Technician Bethel.

Ms. MacDonald then opened the floor for the public to address their concerns.

Viola Dianda is a neighbor of the property addressed concerns about the imposing traffic that this property has created. Ms. Dianda has also stated that this property was used as an Airbnb, to which there have been up to twelve (12) clients leasing at one time.

Joe Huerta: owner of the property stated above, addresses concerns of noise disturbances at the odd hours of the night time. Mr. Huerta also addresses his concerns about the potential of drug distribution with an upward amount of people occupying the property.

John Earl, located at 4711 East Taylor Drive, clarified a point about how many bedrooms would one person need.

Darrel Steele indicated the point that an elderly man would probably prefer not to be using stairs.

Phyllis Earl, located at 4711 Los Feliz Drive, addressed concerns about the invasion of air space, and explains that these houses are meant to be single story.

Mr. and Mrs. Armstrong responded to the public's concerns, stating the addition would not impose any threat of misconfiguration of the neighborhood. Also stated that the property was used as an Airbnb because Scott fell ill to cancer, and had to pay medical debt. Amanda Armstrong stated that she worked at the airport, and adhered to complaints at night.

Sydney Bethel proposed the condition of approval stating, "building permits to require a 50 percent opaque glazing on all east sides of the second story addition shall be required."

Ms. MacDonald states that there are no CCR's associated with Airbnb's.

Ms. MacDonald noted that the request meets the Zoning and Development Code Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic; the amount of vehicular and pedestrian traffic generated by the proposed use is consistent with similar retail uses permitted in this zoning district.*
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;*
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;*
4. *Compatibility with existing surrounding structures and uses;*

5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.*

**Decision:**

Ms. MacDonald approved the use permit for (PL180112) to allow construction of a second story addition to the single-story home located at 4709 South Taylor Drive with an extra condition of approval.

**Condition of Approval:** building permits to require a 50% opaque glazing on all east sides of a second story addition shall be required.

- **Agenda Item No. 5**

Request a Use Permit Standard to reduce the east side yard setback by no more than 20% for the VILLALOBOS RESIDENCE located at 1504 East Dava Drive. The applicant is Disraeli Villalobos. (PL180114)

Sydney Bethel, Planning Technician, gave the following overview of the case:

- The property is located on lot 428 of the Drive, in the R1-6 single family residential district.
- The property is asking for a reduction of the east side yard setback from 7 feet to 5 feet and 7 inches.
- This property has had two (2) previous separate additions, one being from 1984, which was a 169-square foot bedroom addition, and the other being in 2011, a 120-square foot enclosure of the garage.
- It was also noted that this lot has only a 23 percent coverage, not maximizing to the full 45 percentage allotted in the zoning regulations.

Disraeli Villalobos, property owner, confers with what Ms. Bethel stated about the property, and agrees with the conditions of approval.

Ms. MacDonald then asks the public to speak, to which no one did.

Ms. McDonald noted that this request meets the Zoning and Development Code Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic; the amount of vehicular and pedestrian traffic generated by the proposed use is consistent with similar retail uses permitted in this zoning district.*
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;*
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;*
4. *Compatibility with existing surrounding structures and uses;*
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.*

**Decision:**

Ms. MacDonald approved the use permit to reduce the east side yard setback by no more than 20%, located at 1504 East Dava Drive. (PL180114).

- **Agenda Item No. 6**

Hold a public hearing for review of compliance with the conditions of approval for the approved Use Permit to allow an amusement business for GREAT ROOM ESCAPE LLC located at 1625 West University Drive, Suite Nos. 121-122. The applicant is Greg Salyers. (PL160274).

Lee Jimenez, Senior Planner, gave the following overview of the case:

- The business is located in suites 121 and 122 of the 1625 building in the Gateway University 2 Industrial/ Office subdivision located on the Southeast corner of West University Drive and South Edward Drive, of the GID General Industrial District.
- Mr. Jimenez states that the business has been in operation for 1 year, dating back to May of 2017.
- Mr. Jimenez believes that the operation applies for the conditions of approval, and should be rewarded with the use permit.

Greg Salyers, owner of Great Room Enterprises, LLC, was present, but was motioned by the hearing officer that there was no need of a testimony.

Ms. MacDonald noted that this request meets the Zoning and Development Code Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic; the amount of vehicular and pedestrian traffic generated by the proposed use is consistent with similar retail uses permitted in this zoning district.*
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;*
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;*
4. *Compatibility with existing surrounding structures and uses;*
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.*

**Decision:**

Ms. MacDonald approved the use permit to amusement business for Great Room Escape LLC at 1625 West University Drive. (PL160274).

- **Agenda Item No. 7**

Request a Use Permit to allow a tobacco retailer for AOUFE ENTERPRISES LLC located at 3231 South Mill Avenue, Suite No. 102. The applicant is Kasem Aoufe. (PL180108)

Lee Jimenez, Senior Planner, gave the following overview of the case:

- The business is to be relocated from 33 West Southern Avenue to a former restaurant building located at the Northeast corner of South Mill Avenue and East Southern Avenue in the CSS, Commercial Shopping & Services.
- The occupant will own suite 102, a 3800-square foot building, bounded by the considered legal non-conforming analysis sales approved by staff.
- The applicant has recently provided a landscape plan that follows suit with the site plan.

Applicant Kasem Aoufe and architect Ken Eller proceed to the stand, to acknowledge the report by the staff, to which is agreed upon.

Ken Eller states that there is a shared parking plan study with the surrounding businesses.

Ms. MacDonald noted that this request meets the Zoning and Development Code Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic; the amount of vehicular and pedestrian traffic generated by the proposed use is consistent with similar retail uses permitted in this zoning district.*
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;*
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;*
4. *Compatibility with existing surrounding structures and uses;*
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.*

**Decision:**

Ms. MacDonald approved the use permit for the allowance of tobacco retail for Aoufe Enterprises LLC at 3231 South Mill Avenue. (PL180108).

**Agenda Item No. 8**

Request a Use Permit to allow a wireless telecommunication facility (rapid deployment tower) for VERIZON PHO TEMPE TEST located at 126 West Gemini Drive. The applicant is Kevin Dugan of KD Dugan & Co. (PL180111).

Lee Jimenez, Senior Planner, gave the following overview of the case:

- Verizon Wireless would like to install a temporary wireless facility at the regional operations center in South Tempe, which is located North of West Gemini Drive, between South Ash and Maple Drive, in the GID, General Industrial District.
- This will be a temporary rapid deployment tower, used for research and analysis of large venues.
- The duration of the research is 6-9 months.
- The deployment tower will reach heights of 50 feet.
- An operation station will be present for the duration of the research.
- Mr. Jimenez states that this will only be temporary.

Kevin Dugan, project manager, steps forth and concurs with the proposal given by Mr. Jimenez.

Ms. MacDonald noted that this request meets the Zoning and Development Code Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic; the amount of vehicular and pedestrian traffic generated by the proposed use is consistent with similar retail uses permitted in this zoning district.*
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;*
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;*
4. *Compatibility with existing surrounding structures and uses;*
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.*

**Decision:**

Ms. MacDonald approved the use permit for the allowance of a rapid deployment tower located at 126 West Gemini Drive. (PL 180111).

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#### ANNOUNCEMENTS

- Ms. McDonald noted that the next Hearing Officer public hearing is scheduled for Tuesday, June 5, 2018 at 5:00 PM with a study session scheduled for 4:30 PM.

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With no further business, the public hearing adjourned at 6:30 PM.

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Prepared by: Brandon Wilkerson  
Reviewed by: Steve Abrahamson

A handwritten signature in blue ink that reads "Steve A. Abrahamson". The signature is written in a cursive, flowing style.

Steve Abrahamson, Principal Planner  
For Vanessa MacDonald, Hearing Officer

SA:bw